

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

ALEXIS TOVAR, Individually and as Next §
Friend of D.P., a Minor, and PHILLIP REYES, §
as Next Friend of A.R. and J.R., Minors, §
§
Plaintiffs, §
§
VS. § CIVIL ACTION NO. SA-23-CV-847-FB
§
THE CITY OF SAN ANTONIO, TEXAS; §
ALFRED FLORES; ELEAZAR ALEJANDRO; §
and NATHANIEL VILLALOBOS, §
§
Defendants. §

**ORDER ACCEPTING REPORT AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE**

Before the Court are (1) the Report and Recommendation of the United States Magistrate Judge (docket #34); (2) Plaintiffs' Objections to the Report and Recommendation of United States Magistrate Judge (docket #37); (3) Alfred Flores, Eleazar Alejandro and Nathaniel Villalobos's Objections to the Report and Recommendation (docket #38); (4) Alfred Flores, Eleazar Alejandro and Nathaniel Villalobos's Response in Opposition to Plaintiffs' Objections to the Report and Recommendation (docket #45); (5) Plaintiffs' Response to Defendants Alfred Flores, Eleazar Alejandro and Nathaniel Villalobos' Objections to the Report and Recommendation of United States Magistrate Judge (docket #46); and (6) the Officer Defendants' Reply in Support of Their Objections to the Report and Recommendation (docket #49).

Where no party has objected to a Magistrate Judge's Report and Recommendation, the Court need not conduct a de novo review of them. *See* 28 U.S.C. § 636(b)(1) ("A judge of the court shall make a de novo determination of those portions of the report or specified proposed findings and recommendations to which objection is made."). In such cases, the Court need only review the Report

and Recommendation and determine whether they are either clearly erroneous or contrary to law.

United States v. Wilson, 864 F.2d 1219, 1221 (5th Cir.), *cert. denied*, 492 U.S. 918 (1989).

On the other hand, any Report or Recommendation to which there are objections requires de novo review by the Court. Such a review means that the Court will examine the entire record, and will make an independent assessment of the law. The Court need not, however, conduct a de novo review when the objections are frivolous, conclusive, or general in nature. *Battle v. United States Parole Commission*, 834 F.2d 419, 421 (5th Cir. 1987).

In the Report, Magistrate Judge Bemporad recommends that the Officer Defendants' Motion to Dismiss (docket #12) be GRANTED but that Plaintiffs should be afforded an opportunity to amend their complaint to allege plausible facts necessary to overcome qualified immunity. The Court has reviewed all of the objections filed by the parties to the Report and Recommendation and has conducted a de novo review of the Magistrate Judge's Report and Recommendation and finds the objections should be overruled at this time.

The Court hereby accepts, approves, and adopts the factual findings and legal conclusions by the United States Magistrate Judge contained in the Report and Recommendation (docket #34). The Report and Recommendation of the United States Magistrate Judge shall be accepted pursuant to 28 U.S.C. § 636(b)(1) such that Defendants Alfred Flores, Eleazar Alejandro and Nathaniel Villalobos's (12)(b)(6) Motion to Dismiss (docket #12) shall be GRANTED, but Plaintiffs shall be afforded an opportunity to amend their complaint to allege plausible facts necessary to overcome qualified immunity.

Accordingly, it is hereby ORDERED that the Report and Recommendations of the United States Magistrate Judge, filed in this case on July 3, 2024 (docket #34) is ACCEPTED such that Defendants Alfred Flores, Eleazar Alejandro and Nathaniel Villalobos's (12)(b)(6) Motion to Dismiss (docket #12)

is GRANTED, but Plaintiffs may file an amended complaint to allege plausible facts necessary to overcome qualified immunity in accordance with the deadlines and any additional requirements set by Judge Bemporad for the filing of an amended complaint and any and all responses and replies thereto.

It is so ORDERED.

SIGNED this 23rd day of September, 2024.


FRED BIERY
UNITED STATES DISTRICT JUDGE